

National Association of Regulatory Utility Commissioners

Incorporated

BRUCE B. ELLSWORTH, *President*
New Hampshire Public Utilities Commission
8 Old Suncook Road, Building No. 1
Concord, New Hampshire 03301-7319

MARGARET A. WELSH
Executive Director

GAILE ARGIRO
Treasurer

JOLYNN BARRY BUTLER, *First Vice President*
Ohio Public Utilities Commission

JIM SULLIVAN, *Second Vice President*
Alabama Public Service Commission



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Federal Communications Commission
Office of Secretary

April 29, 1997

The Honorable Reed Hundt
Chairman
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

DATE OR LATE FILED

Dear Chairman Hundt:

Enclosed for your review is a memo confirming our commitment to the framework set forth in the recommended decision for the schools and libraries discount program pursuant to Section 254(h).

This memo is concurrently being formally filed today in CC Docket No. 96-45.

Respectfully,

Kenneth McClure, Chair
State Members of the Federal-State
Joint Board on Universal Service

Enclosure

cc: The Honorable Sharon L. Nelson
The Honorable Laska Schoenfelder
The Honorable Julia Johnson
The Honorable Martha S. Hogerty

April 29, 1997

SUBJECT: Schools and Libraries Discount Program Under Section 254(h)

**TO: Reed Hundt, Chairman
Susan Ness, Commissioner
Rachelle Chong, Commissioner
James Quello, Commissioner**

**FROM: Kenneth McClure, Commissioner of Missouri Public Service Commission and
State Chair of 254 Joint Board
Martha Hogerty, Missouri Public Counsel
Julia Johnson, Chair of Florida Public Service Commission
Sharon L. Nelson, Chair of Washington Utilities and Transportation Board
Laska Schoenfelder, Commissioner of South Dakota Public Utilities Commission
Members, 254 Joint Board**

We are sending this memo to confirm our commitment to the framework set forth in the Recommended Decision for the schools and libraries discount program pursuant to Section 254(h). We continue to believe that the framework in the Recommended Decision reflects the appropriate balance of competing interests. Competitive neutrality serves as the cornerstone of the platform to facilitate the competitive bidding of all telecommunications services, Internet access service and internal connections and discounting of these categories of services under the Section 254(h) program. In addition to facilitating universal service for schools and libraries, we believe that the program also serves the legislative objective of encouraging local exchange competition by incorporating the competitive bidding requirement. The competitive bidding requirement, in turn, rests upon the availability of bidders which is fostered by the competitive neutrality provision.

There can be no doubt that the policy of competitive neutrality was embraced by the Joint Board as a guideline in its deliberations. Section 254(b) prescribes six policy principles that serve as the policy basis underlying the Recommended Decision. Pursuant to its authority in Section 254(b)(7), the Joint Board adopted the additional principle of competitive neutrality as a necessary and appropriate policy. With respect to universal service for schools and libraries, Subsection (h)(2)(A) explicitly prescribed competitive neutrality, wherein Congress directed that the Commission *shall establish* competitively neutral rules to facilitate access to advanced telecommunications and information services for all public and non-profit elementary and secondary school classrooms, libraries and health care providers.¹

Based on this analysis, the Joint Board concluded that "Section 254(h)(2)(A) provides a broader framework for facilitating deployment of services to schools and libraries because the competitively neutral rules contemplated under that section are applicable to all service providers." *Recommended Decision*, ¶ 460.

¹ Section 254(h)(1)(B) and (h)(2)(A) were relied upon to include all telecommunications services within the discount program. Internet access and internal connections were included within the program pursuant to Subsection (h)(2)(A).

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We are aware that some commentators have criticized the competitive neutrality feature of the schools and libraries discount program, citing to Section 254(e) for the proposition that non-telecommunications carriers should be excluded from the program, opponents contend that only telecommunications carriers should be allowed to participate in the Subsection (h) program.

Section 254(e) limits the provision of federal universal service support to eligible telecommunications carriers and specifically refers to the certification requirement of eligible telecommunications carriers pursuant to Section 214(e). Section 214(e) in turn refers to a carrier's universal service obligations pursuant to Section 254(c). Specifically, it requires eligible telecommunications carriers to offer the services which are supported by universal service pursuant to Section 254(c). Section 254(c)(3) refers to the subsection (h) program generally. Subsection (h)(1)(B), however, more specifically clarifies that the Section (c)(3) services are discounted pursuant to that particular section of subsection (h). This statutory interrelationship demonstrates that the limitation set forth in Section 254(e) pertains generally to Section 254(c) services, which in turn is only relevant to subsection (h)(1)(B). This interpretation is further bolstered by the specific language set forth in subsection (h)(1)(B)(ii), which is an express exemption from the Section 254(e) requirement. No such exemption language was required for Subsection (h)(2)(A), because Section 254(e) does not apply to that subsection.

Moreover, if the statute were to be construed in a manner which prohibited the implementation of competitive neutrality, it would produce the illogical result of allowing the broader category of *all* telecommunications carriers (compared to the narrower category of *eligible* telecommunications carriers) to provide the basic package of universal services under Subsection (c)(3) and Subsection (h)(1)(B), by virtue of the exemption set forth in Subsection (h)(1)(B)(ii). Since no express exemption is found in Subsection (h)(2)(A), then this argument (with which we disagree) would require the conclusion that only eligible telecommunication carriers certified under Section 214(e)--*as opposed to all telecommunications carriers*--could provide the Subsection (h)(2)(A) services:

- the (c)(3) package of telecommunications services
- access to advanced telecommunications services
- access to information services.

It is not sensible to restrict the provisioning of competitive services by prohibiting alternative providers from participating in the program. In particular, there can be no doubt that the provision of internal connections and Internet access occurs in a competitive marketplace. Neither service is currently regulated as a common carrier service. The Joint Board cited extensively to legislative history to support its conclusions that internal connections and Internet access should be included within the schools and libraries discount program. This legislative intent, together with the explicit statutory directive to establish competitively neutral rules, makes clear that all service providers must be permitted to participate in the discount program.

Competitive bidding is required for establishing the "pre-discount price" for services. The discount is then applied to the pre-discount price to determine what portion of the price must be paid by the school/library and what portion of the price is paid out of the universal service fund.

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The competitive bid requirement exerts downward pressure on the pre-discount price, thereby making the pre-discount price more affordable by reducing the amount that the schools/library must fund for telecommunications service, Internet access and internal connections. Lowering the pre-discount price through competitive pressure would also reduce the absolute amount of federal funding required per school or library, thus enabling the federal fund to assist more schools and libraries.

We appreciate the challenge facing the Commission in reviewing the parties' comments to the Recommended Decision and developing final rules that are based on sound legal and policy principles. We are hopeful that this memo has offered some further elucidation as to why the competitive neutrality feature of the schools and libraries discount program is the necessary and appropriate outcome.

cc: Mr. William F. Caton, Acting Secretary